

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 400 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANGITA @ SAVITABEN AMRUTLAL

Versus

AMRUTLAL KANJIBHAI

Appearance:

MR DM THAKKAR for Petitioner

MR RD DAVE for Respondent No. 1

Mr. ST Mehta, Addl. PP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/02/97

ORAL JUDGEMENT

Petitioner had applied for maintenance under section 125 of the Criminal Procedure Code, 1973 by filing Criminal Miscellaneous Application No. 91 of 1991 before the learned Judicial Magistrate, First Class, Keshod. The learned Magistrate, under his judgment and order dated 15th July, 1993, ordered that the respondent

No. 1 shall pay the monthly maintenance of Rs. 300/- to the petitioner and Rs.200/- to the minor daughter. Feeling aggrieved, respondent No. 1 has preferred criminal revision application No. 134 of 93 before the learned Sessions Judge, Junagadh. The learned Sessions Judge, Junagadh, on 3rd August, 1994, allowed the application and reduced the maintenance payable to the petitioner to that of Rs.150/- per month. Feeling aggrieved, petitioner has preferred this petition before this Court.

2. Learned Magistrate has held that the petitioner was deserted by respondent No. 1 and that he was earning around Rs. 4,000/- every month. Considering this income, the petitioner was awarded monthly maintenance of Rs.300/-. The only evidence in support of the claim made by the petitioner was the oral evidence. However, the petitioner's claim does not appear to have been controverted by respondent No. 1.

3. While considering the revision application preferred by respondent No. 1, learned Sessions Judge held that the petitioner was not ready and willing to stay with her husband and that the respondent No. 1 had made adequate efforts to accept and cohabit with the petitioner. However, the learned Judge proceeded to reduce the amount of maintenance only on the ground that respondent No. 1 had deposited the amount of one half of the maintenance awarded to the petitioner and thus, had shown his bona fide. He has further reasoned that if the amount of maintenance is reduced, petitioner-wife could be induced to reside and cohabit with her husband respondent No. 1. Learned Sessions Judge has proceeded on erroneous assumption of the facts. The question that arose is whether the petitioner had good reason for not living with her husband and whether respondent No. 1 had sufficient means to maintain the petitioner. In view of the findings recorded by the learned Magistrate that the petitioner had good reason to live separate from her husband and that the respondent No. 1 had sufficient means to maintain the petitioner, the petitioner ought to be awarded adequate maintenance. The award of maintenance cannot be refused merely with a view to oppressing the wife to reside and cohabit with her husband. Such cannot be the consideration in making the award for maintenance. If it is found that the wife had no good reason to live separate from her husband, she would not be entitled to maintenance at all. In the present case, learned Sessions Judge has made an award of maintenance in favour of the petitioner. Thus, it cannot be said that the petitioner had no good reason to live

separate from her husband. Since there is no finding recorded by the learned Sessions Judge as to the income of respondent No. 1, this Court must rely upon the finding recorded by the learned Judicial Magistrate, First Class. Considering the income earned by respondent No. 1, monthly maintenance of Rs. 300/- awarded to the petitioner wife cannot be said to be excessive.

4. In view of the above discussion, this petition is allowed. Judgment and order of the learned Sessions Judge, Junagadh dated 3rd August, 1994 passed in Criminal Revision Application No. 134 of 1993 is quashed and set aside. The judgment and order of the learned Judicial Magistrate, First Class, Keshod passed in Criminal Miscellaneous Application No. 91 of 1991 is restored. Respondent No.1 is directed to pay the monthly maintenance of Rs. 300/- regularly commencing from 1st March, 1997. Respondent No. 1 is further directed to pay all the arrears of maintenance calculated in accordance with the order of the learned Magistrate, Keshod on or before 30th April, 1997. Rule is made absolute accordingly.

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